2.06

Entrapment

The defendant has raised the affirmative defense of entrapment with respect to the charged offense of _____. The defendant must prove the following by clear and convincing evidence:

1. The idea of committing the offense started with law enforcement officers or their agents rather than the defendant; and

2. The law enforcement officers or their agents urged and induced the defendant to commit the offense; and

3. The defendant was not predisposed to commit the type of offense charged before the law enforcement officers or their agents urged and induced the defendant to commit the offense.

A defendant does not establish entrapment if the defendant was predisposed to commit the offense and the law enforcement officers or their agents merely provided the defendant with the opportunity to commit the offense.

It is not entrapment for law enforcement officers or their agents to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered in determining if the defendant has proven entrapment.

If you find that the defendant has proven entrapment by clear and convincing evidence, you must find the defendant not guilty of the offense.

SOURCE: A.R.S. ∋13-206 (Statutory language as of August 9, 2001).

USE NOTE: The court shall instruct on the definition of clear and convincing evidence. To receive an entrapment instruction, the defendant must admit the substantial elements of the charged offense. A.R.S. ∋13-206(A).

COMMENT: The former subsection D of the statute required the trial court to instruct the jurors that the only issue for their consideration was whether the defendant had proven the defense of entrapment by clear and convincing evidence. However, in *State v. Preston*, 197 Ariz. 461, 463-64, 4 P.3d 1004, 1007-08 (App. 2000), the Court of Appeals declared former subsection D unconstitutional because it effectively denied a defendant the presumption of innocence and the right to a jury determination of guilt.

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